

4. HOUSING CONSTRAINTS

New housing development can be affected by economic forces in the private market as well as regulations and policies imposed by public agencies. These constraints primarily impact the production of new housing but can also affect the maintenance and/or improvement of existing housing. The discussion below and on the following pages analyzes both the governmental and non-governmental (“market”) constraints that can affect the housing market in Los Gatos.

GOVERNMENTAL CONSTRAINTS

Governmental regulations, while intentionally regulating the quality of development in the community can also, unintentionally, increase the cost of development and thus the cost of housing. These governmental constraints include land use controls, building codes and their enforcement, site improvements, fees, and other exactions required of developers, and local processing and permit procedures. Land use controls may limit the amount or density of development, thus increasing the cost per unit. On site and off site improvements like road improvements, traffic signals on adjacent streets or sewer improvements may increase an individual project’s costs of development. Processing and permit requirements may delay construction, increasing financing and/or overhead costs of a development.

A. LAND USE CONTROLS

The Town’s General Plan and Zoning Ordinance are the primary tools, which are used to manage the development of residential units in Los Gatos. The Town’s General Plan allows for residential land use ranging from “Hillside Residential” (a maximum of 1 unit per acre) to “High Density Residential-Special Use” with a maximum density of 20+ units per acre.

The Zoning Ordinance is more specific than the General Plan and continues these same general density parameters but with more detailed residential zone districts. In specific, the Zoning Ordinance allows for the following residential zone categories:

1. Resource Conservation (RC)
2. Hillside Residential (HR)
3. Single Family Residential (R-1)
4. Single Family Residential, Downtown (R-1 D)
5. Duplex Residential (R-D)
6. Multiple Family Residential (RM)
7. Mobile Home Residential (RMH)

The table on the following page illustrates the various requirements by residential zoning district.

ILLUSTRATION # 16: RESIDENTIAL DEVELOPMENT STANDARDS BY ZONING DISTRICT

ZONING DISTRICT	DENSITY RANGE	MINIMUM LOT AREA	MAXIMUM HEIGHT	FRONT YARD SETBACK	SIDE YARD SETBACK	REAR YARD SETBACK	PARKING PER UNIT	OTHER
RC	1 Unit Per Lot	20 Acres	30 feet	30 feet	20 feet	25 feet	2 spaces	
HR	HR-1: 1-5 acres for each unit HR-2.5: 2.5-10 acres for each unit HR-5: 5-40 acres for each unit HR-20: 20-160 acres for each unit	40,000 sq.ft.	30 feet	30 feet	20 feet	25 feet	2 spaces	(Note: density ranges are also dependent on hillside slope calculations)
R-1	R-1:8	8,000 sq. ft.	30 feet	25 feet	8 feet	20 feet	2 spaces	
	R-1:10	10,000 sq. ft.	30 feet	25 feet	10 feet	20 feet	2 spaces	
	R-1:12	12,000 sq. ft.	30 feet	25 feet	10 feet	20 feet	2 spaces	
	R-1: 15	15,000 sq. ft.	30 feet	25 feet	12 feet	25 feet	2 spaces	
	R-1: 20	20,000 sq. ft.	30 feet	30 feet	15 feet	25 feet	2 spaces	
	R-1:30	30,000 sq. ft.	30 feet	30 feet	16 feet	25 feet	2 spaces	
R-1 D	5-8 units per acre	5,000 sq. ft. for single-family 8,000 sq. ft. for duplexes	30 feet	15 feet	5 feet	20 feet	2 spaces for single-family 1.5 times number of units for duplexes	Architecture and Site approval required for duplex buildings
R-D	1-5 units per acre	8,000 sq. ft.	30 feet	25 feet	8 feet	20 feet	2 spaces	
RM	R-M:5-12 5-12 units per acre R-M: 5-20 5-20 units per acre	8,000 sq. ft.	30 feet	25 feet	8-10 feet	20 feet	Resident: 1.5 times the number of units Visitor: 1 space for unit	Height may exceed 30 feet if the building has cellar parking
RMH	Maximum is 12 units per acre	5 acres for mobile home zone	30 feet	25 feet	8 feet	20 feet		Arch. and Site approval required except for new mobile home on an existing mobile pad.



Overlay Zones

There are two overlay zones that apply to residential uses in the Town's Zoning Ordinance. These are the Planned Development (PD) and the Landmark and Historic Preservation (LHP) zones. The LHP overlay is applied to those areas of the Town with special historic or architectural significance. Standards have been established for alterations, demolitions and reconstruction of structures in these areas.

The PD Overlay provides for alternative uses and developments more consistent with site characteristics. The minimum lot size for a PD is 40,000 square feet, unless the purpose is to provide affordable housing, in which case there is no minimum site area. When a PD overlay is applied to a residential zone for an affordable housing development, the affordable housing requirement becomes a part of the overlay conditions. The PD Overlay is also flexible in regard to other standards, such as setback and height requirements in order to encourage the most feasible site design.

Mixed Use development is allowed in any residential zone in the Town and is processed as a Planned Development. Mixed Use developments have been approved in several recent developments in Los Gatos. Most notably, the Town approved the Sobrato development (Vasona Gateway), which included 135 apartment units and a research and development office park. The Town also approved the Los Gatos Boulevard development that included office uses and residential apartment and single-family units. In 2002, the Town was developing a work plan to further refine the Mixed Use requirements in order to encourage more Mixed Use development.

Code Compliance

The Town enforces building, housing and safety codes through the Code Compliance program. Upon complaint, the Town will conduct an evaluation of the viability of the complaint and follow-up will be provided as appropriate. For those dwelling units built as BMP (Below Market Price) units, there is an annual compliance audit to ensure that the units continue to meet code requirements.

Secondary Dwelling Units

Secondary dwelling units are residential units in addition to the primary residential unit on a lot. Los Gatos allows new secondary units as follows:

- In RM, R-1D and Planned Development districts, or
- In other residential districts (except RC and HR) in conjunction with a transfer of secondary dwelling unit credit and a conditional use permit.



ILLUSTRATION # 17: RESIDENTIAL DEVELOPMENT STANDARDS
STANDARDS FOR DEVELOPMENT OF SECONDARY DWELLING UNITS

Type of Secondary Unit	Minimum Lot Size	Maximum Unit Size	Height	Parking
Interior	10,000 sq. ft.	750 sq. ft.	Unit must be located on first floor of primary unit	1 space
Attached	12,000 sq. ft.	750 sq. ft.	Unit must be located on first floor of primary unit	1 space
Detached	15,000 sq. ft.	900 sq. ft.	Maximum of one story/Not permitted on second floor of a detached accessory unit	2 spaces

Architectural and Site Review is required for all secondary units. Further, transfer of credit for a secondary unit is only available upon demolition, removal or conversion in use of an existing secondary unit. Therefore, the “pool” of potential secondary units is currently limited to the number of existing, legal secondary units in the Town and the secondary units that could be created in new residential developments in the RM, R-1D and PD zones.

As a community becomes “built-out,” the use of all available tools to create more housing units becomes even more important. Secondary dwelling units are an important tool because they can be provided on already-developed land. Program #6 in Chapter 8 of this document (“Housing Program Strategy”) suggests that the Town re-consider its Secondary Dwelling Unit program; and, in particular, evaluate whether the number of secondary units should be controlled and if there are standards such as minimum lot size or parking requirements that could be revised to encourage more units.

Residential and Commercial Uses

Residential uses are allowed in all office and commercial zones in the Town with a conditional use permit.

Density Bonuses

The Town allows up to a 100% density bonus for qualified projects. An example of this procedure is the approval of the Los Gatos Creek Village Apartments, which received a 100% density bonus.

Constraints Regarding Housing for People with Disabilities and Homeless

The Town's Zoning Code allows small group homes (limited to 6 or fewer persons) for day care or residential care in all residentially zoned districts without a use permit. Residential care and day care facilities for 7 or more persons are allowed in all districts (except RMH) with a conditional use permit. There are no specific constraints imposed for developments that assist disabled or homeless households.

The Town encourages accessibility improvements by requiring that certain "universal design" features be incorporated into all residential projects as a condition of approval (Town Resolution 1994-61). These requirements include:

1. Wooden backing (no smaller than 2 inches x 8 inches) shall be provided in all bathroom walls, at water closets, showers and bathtubs, located at 34 inches from the floor to the center of the backing, suitable for the installation of grab bars.
2. All passage doors shall be at least 32 inches wide on accessible floor.
3. Primary entrance shall have a 36-inch wide door including a 5-foot x 5-foot level landing, no more than one-inch out of plane with the immediate interior floor level, with an 18-inch clearance.

The Town will continue to evaluate any potential constraints to the development or improvement of housing for people with disabilities. See Program #23 in Chapter 8, which includes an evaluation of the City's Zoning and Development Standards during 2002-2003 to ensure that all constraints to the development or improvement of housing for people with disabilities are removed.

B. LOCAL HOUSING PROGRAMS

There are two Town housing programs that could be considered as constraints to housing. The first program is the Below Market Price (BMP), which facilitates the development of units affordable to low and moderate income households. The BMP is applicable to projects of 5 or more units, which are new multifamily rental projects, residential condominium or planned development subdivisions and community apartment or residential stock cooperative projects. For projects containing 5-19 market rate units, BMP units are required at a number equal to 10% of the number of market rate units. Projects of 20-100 market rate units must produce BMP units according to the following formula: $\# \text{ of BMP units} = .225 (\text{total} \# \text{ of market units}) - 2.5$. Projects in excess of 100 market rate units must provide BMP units equal to 20% of market rate units. Planned developments with an underlying zone of HR (Hillside Residential) pay an in-lieu fee instead of producing actual BMP units.

Rental rates for BMP rental units are established at 80% of the fair market rent (FMR) limit as determined by HUD. The initial sales price of the owner-occupied units is determined in consultation between the Town Manager (or delegate) and



the developer. The maximum sales price is based on household income limits (ranging between 80-100% of HUD income limits). The initial sales price may include construction costs and a per unit share of infrastructure, financing and improvement costs

In evaluating the BMP program in light of the Los Gatos housing market, the BMP is not considered to be a constraint to the development of market-rate housing. As the following sections of this chapter explain, the cost of land and the cost of construction in Los Gatos are more significant constraints to the development of market rate housing than the BMP. In other words, housing in Los Gatos is expensive due to land/construction costs as well as the desirability of Los Gatos as a residential setting within the Santa Clara Valley area. The BMP's impact on housing costs is minimal compared to these factors. Further, the BMP units are "bonus" units that are units in addition to the approved density of a project. Therefore, the developer is allowed to build additional units in exchange for providing those units at below market costs. Rather than being considered a constraint to housing, the BMP actually provides an incentive in the form of additional units that the developer is allowed to provide.

The second Town housing program that needs to be evaluated as a potential constraint is the Town's Rental Dispute Resolution Program. The Rental Dispute Resolution Program is contracted out to a local non-profit, Project Sentinel, for administration. The Program limits annual rent increases in multi-family rental properties of 3 or more units to the greater of 5% or 70% of the Consumer Price Index. However, there is flexibility to this requirement if repairs are made to the property or upon sale of the property. At this time, the Program is not considered to be a constraint to housing, especially multi-family housing.

C. INFRASTRUCTURE CAPACITY

There are no major infrastructure capacity or delivery issues in Los Gatos at this time. There are certain areas of the Town, however, where the sewer and/or water systems are old and are in need of replacement or upgrade.

The Town's water is primarily supplied by San Jose Water Company. There are some smaller, private mutual water companies that supply water but they are few in number. Approximately 95% of the Town is serviced by San Jose Water Company. There are some areas of the Town, such as parts of the downtown area and some areas in the east side, where the water delivery system is old and the piping needs to be replaced. The Town and San Jose Water Company are

aware of this situation and the San Jose Water Company is developing plans to upgrade those lines.

The sanitary sewer system is maintained by the West Valley Sanitation District and the Town is primarily responsible for the storm drain system. Again, there are areas in the Town that need some of their sewer lines replaced due to age or composition of the lines. For example, the downtown area still uses some of the original main sanitary lines, installed in the 1940s. Restaurants in the downtown that do not have grease traps contribute to the problems in the sanitary system. The Sanitation District is working on maintaining these lines and upgrading as needed.

There are some properties that were annexed into the Town and have pre-existing septic systems and no connections to sanitary or storm water. This is especially true for the neighborhoods east of Highway 17, in the Placer Oaks and Frank Avenue areas. These residential units are allowed to remain on septic systems until new development is proposed for the property. In regard to traffic and circulation, the overall circulation system is estimated to be below capacity. The construction of Route 85, in particular, has alleviated most of the Town's traffic capacity issues although there are a few intersections that experience traffic congestion during certain peak hours.

D. GOVERNMENTAL FEES

Governmental fees can add a significant cost to the price of housing. In 1999, the State of California Department of Housing and Community Development distributed the report, Pay to Play that analyzed governmental fees in 89 cities and counties in California. The Town of Los Gatos was one of the communities surveyed. Listed below is the summary of fees charged by Los Gatos for an infill, single-family unit.

**ILLUSTRATION # 18: TYPICAL FEES: SINGLE FAMILY, INFILL UNIT
TOWN OF LOS GATOS, 1999**

TYPE OF FEE	AMOUNT
Planning Fees	\$3,216
Plan Check, Permit and Inspection Fees	\$6,294
Infrastructure, Impact and District Fees	\$13,389
TOTAL FEES	\$22,899



The 1999 Report compares individual jurisdiction's fees with neighboring communities. Listed below are Los Gatos' typical fees as compared to the average for Bay Area communities. The comparisons indicate that Los Gatos' fees are lower than the average for other Bay Area communities.

	<u>Los Gatos</u>	<u>Bay Area Average</u>
Infill, Single Family Unit	\$22,899	\$26,819
Single Family Subdivision	\$23,505	\$28,526
Multi-Family, Per Unit	\$12,148	\$18,428

E. PROCESSING TIME

The residential development process proceeds through various stages, each of which requires some form of Town approval. According to Town staff, a typical single-family infill residential application takes less than 3 months to process. If the unit is proposed in a hillside residential zone, then the processing time usually is lengthened to 4-6 months total. In regard to mixed use, two mixed use projects in 2002 (Sobrato Development and Terreno de Flores) were processed in 4-6 months, following establishment of zoning densities on the property.

Typical processing steps for a multi-family housing project include:

1. Upon submittal of a PD or subdivision application, the application is distributed to other Town departments (Planning, Engineering, Parks, Police) and other public agencies for review (e.g. utility districts, school districts, etc.)
2. Staff reviews/meets with applicant to resolve any concerns or plan deficiencies. Design issues are discussed at this time also. Arborist review and/or architectural review may be done concurrently at this time.
3. Development Review Committee (DRC) meeting – once DRC deems application is complete, it forwards its recommendation to the Planning Commission.
4. Environmental review, traffic impact analysis (and occasionally geotechnical review) completed as appropriate
5. Story poles placed on project site by applicant.
6. Public hearings with Planning Commission and/or Town Council approval.

The types of issues that usually prolong the processing time are design issues and neighborhood compatibility. Recently, the Town approved the use of an architectural consultant to review plans and provide recommendations. It is anticipated that the use of the consultant will reduce processing time for those applications that are problematic in regard to design and neighborhood issues.

F. BUILDING CODES

The Building Codes adopted by the Town of Los Gatos are the Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code, and National Electric Code. The Town's Building Codes have been adopted in order to prevent unsafe

or hazardous building conditions. As such, the Town's codes are a reasonable and normal enforcement of Town regulations and do not act as a constraint to the construction or rehabilitation of housing.

G. PARKING REQUIREMENTS

The chart on page 40 of this document identifies parking requirements for various residential zones. The Town does allow flexibility in these parking requirements, especially for Planned Developments. Shared parking as well as reduced parking for elderly and disabled developments have been approved in past developments. Parking requirements are not considered a constraint to housing.

MARKET CONSTRAINTS

There are a number of costs involved in the development of housing. These include land and construction costs, site improvements (streets, sidewalks, etc.), sales and marketing, financing, and profit. Because these costs are so market sensitive, it is difficult for a local governmental body to reduce them in any way.

As is true for most Bay Area communities, Los Gatos is an expensive housing market. Developable land is available but not plentiful. Land costs are consequently high due to the demand for land. The Construction Industry Research Board reports that the medium cost per square foot for new residential construction (including land and overhead cost) was \$246 per square foot in Santa Clara County in 2000.

Developers in Los Gatos report that financing of new residential development is not a problem. Financing is available and can be provided at reasonable terms and conditions. The only residential construction that can potentially be affected by financing and insurance requirements is condominium construction. Due to the many lawsuits filed in recent years regarding construction litigation of condominiums, there has been a decrease in the financing and insurance available to new condominium developments. This is a statewide problem and not unique to Los Gatos.

PRODUCING AFFORDABLE HOUSING IN TODAY'S MARKET

The expensive land and construction costs in the area also affect the production of affordable housing. Non-profit developers who build affordable units report that their costs have escalated in recent years. For example, Community



Housing Developers have indicated that the cost in 1999 to build the Los Gatos Creek Village Apartments was approximately \$163,000 per unit. In order to ensure that the units are affordable to very low-income households, governmental subsidies were necessary. The Town contributed funds and staff time to the development. Community Housing Developers report that the Town's subsidy was \$56,250 per unit.

Affordable developments require substantial assistance from local, State and Federal funding sources. Examples of funding subsidies include Redevelopment funds, In-lieu fees, CDBG and HOME funds, Below Market Bond financing, Low Income Housing Tax Credits, California Housing Finance Agency funding, California Housing and Community Development programs. The provision of financing or other subsidies to an affordable housing development is necessary in today's high-cost housing market where land is scarce and construction costs are expensive.

SUMMARY ANALYSIS OF CONSTRAINTS ON LOS GATOS' HOUSING MARKET

Analysis of Land Use Control Constraints:

INFORMATION IN THIS CHAPTER INDICATES THAT THERE ARE LAND USE CONTROLS THAT AFFECT THE DEVELOPMENT OF RESIDENTIAL UNITS. EXAMPLES OF THESE CONTROLS ARE ZONING REGULATIONS, PROCESSING TIMES AND FEES. IN REGARD TO PROCESSING TIMES AND FEES, THE TOWN'S AVERAGE PROCESSING TIME FOR SINGLE FAMILY UNITS AND ITS AVERAGE FEES FOR ALL TYPES OF UNITS ARE BELOW THOSE OF NEIGHBORING COMMUNITIES. ZONING, ESPECIALLY FOR HILLSIDE PARCELS, IS A DEFINITE CONSTRAINT TO ADDITIONAL HOUSING BECAUSE MOST OF THE LAND AVAILABLE FOR DEVELOPMENT IN LOS GATOS IS LOCATED IN HILLSIDE RESIDENTIAL AREAS. HOWEVER, THE TOWN CONSIDERS THE HILLSIDE AREA AS A UNIQUE VISUAL, OPEN SPACE AND ENVIRONMENTAL RESOURCE AND HAS CHOSEN TO CONTROL THE AMOUNT AND TYPE OF HOUSING BUILT IN THOSE AREAS.

THERE IS ONE LAND USE CONTROL ISSUE, HOWEVER, THAT THE TOWN NEEDS TO RE-EVALUATE DURING THE 2002-2007 PLANNING PERIOD AND THIS ISSUE IS SECONDARY DWELLING UNITS.

SECONDARY DWELLING UNITS:

THE TOWN'S SECONDARY DWELLING UNIT PROGRAM SEVERELY CONTROLS THE PROVISION OF ADDITIONAL SECONDARY UNITS. UNLESS A TRANSFER DEVELOPMENT CREDIT IS AVAILABLE, SECONDARY UNITS ARE NOT ALLOWED IN EXISTING R-1 ZONED AREAS. FURTHER, THE MINIMUM LOT SIZE AS WELL AS THE HEIGHT AND PARKING LIMITATIONS PROHIBIT CREATIVE USE OF SECONDARY UNITS IN RESIDENTIAL AREAS. PLEASE SEE PROGRAM #6 IN CHAPTER 8 OF THIS DOCUMENT, WHICH PROPOSES AN EVALUATION OF THE TOWN'S SECONDARY DWELLING UNIT PROCEDURES.